



March 8, 2023

VIA CM/ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re: Google Digital Advertising Antitrust Litigation*,
No. 1:21-md-03010 (PKC)

Dear Judge Castel:

The plaintiffs' group respectfully submit this letter to update the Court on the remaining issues for the parties' proposal for an Order on Electronically Stored Information, as discussed and ordered at the last Case Management Conference on February 22, 2023 (the CMC). See Minute Entry dated 2/22/2023.

To recount, the parties have been able to agree on a stipulation for most provisions except in two areas: (1) whether, when a document's author references another document by providing a link, rather than attaching the document, the linked-to document must be produced, and (2) what advertisement logs ("ad logs") need to be preserved.

Document Links: At the February 22, 2023 case management conference, the Court encouraged Google to provide plaintiffs with statistics on what percentage of already-produced materials contain links and, of those links, how many reference documents not already produced to plaintiffs. Hr'g Tr. (Feb. 22, 2023) at 34:13-23. Counsel for Google said they "would be happy to try to do some of that sampling." *Id.* at 35:4. Plaintiffs requested those statistics on multiple occasions, but Google has provided none. Instead, because of Google's unwillingness to provide statistics, the parties have engaged in multiple meet and confers without the factual background necessary to understand the scope of the linked document dispute.

Even without that data, plaintiffs have worked to find a resolution to this issue. The primary remaining dispute is whether Google should be required to produce all documents in its custody, possession, or control that are referenced by link in responsive, non-privileged documents, regardless of whether Google already has collected such linked-to documents for review. In other words, if the author of a responsive document attaches one or more other documents by link, must the linked-to document be produced wherever it may be found? The answer is clearly "yes" – the author's choice to reference another document demonstrates that the linked-to document is necessary to understand

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the responsive document. The relevance of the linked-to document does not depend on whether or not Google decided to collect the document for review.

Plaintiffs believe that Google, not the plaintiffs, should identify any relevant documents that have links. Using the Court's example during the February 22, 2023 CMC, if in a given relevant document there is a hyperlink to a manual on page 36, and the linked document is not privileged, Google should have to identify that there is a link in the document and produce the corresponding nonprivileged linked-to document. It should not, as Google proposes, be the plaintiffs' burden to (i) identify links in Google's documents and (ii) hope that Google agrees to produce the links if Google feels that the number of requests for linked documents is reasonable and proportionate. Although Google has not provided the statistics they suggested they were "happy" to provide, from what plaintiffs can tell, the issue of linked-to documents will be pervasive in this matter. A number of examples from existing productions further illustrate why it is necessary for Google to produce these linked documents:

- The links often refer to Google documents that cannot be readily attached because they are (1) technical designs (e.g., one that is too large to embed within the email), (2) financial or statistical analysis (e.g., a spreadsheet stored on cloud for easy access by all teams, including people not on the email), (3) powerpoint presentations (e.g., that was not attached because the color often makes the document too large), or (4) documents that can only be opened from another Google internal-application or interface (e.g., output for certain Google internal dashboards and tools regarding ad experiments, product launches, or campaigns, that must be viewed on the custom Google dashboard application itself and not through the email application).
- The links are often in a form that is either indecipherable (e.g., "go/docXXX"), or mismatched against the actual name of the document. Google's failure to produce these documents, and its failure to produce sufficient metadata to tie a linked document with the linking document, make it nearly impossible for plaintiffs to tell what has been produced and what has not.
- The linked documents may not be picked up from independent key word searches or custodial searches, because the documents may not have a custodian, may rely on internal Google codenames or tool-based naming nomenclature that do not match search terms, or may be so technical or numbers-based that the contents do not match a search term.

Without the statistics plaintiffs requested, and in light of the pervasive presence of links in documents already produced, plaintiffs can neither adequately evaluate nor accept Google's linked-document proposals. Plaintiffs proposed ESI order contains their most recent linked-document proposal to Google. *See* Ex. 1 (excerpt of the parties' meet and confer correspondence and attached proposed ESI order). That proposal rightly places the responsibility for identifying and producing linked-to documents on Google.

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Ad Logs: The plaintiffs cannot agree to waive rights on ad logs that they have not yet seen, that will contain relevant information on advertiser bids, publisher inventory and auction mechanics for ads viewed on plaintiffs' publications worldwide. Google has already agreed to preserve ad logs for 6 countries – belying Google's longheld contention that ad logs for ads viewed outside the United States are "not readily accessible." Plaintiffs have also agreed to meet and confer with Google regarding the preservation and production of a sample of ad log files, rendering premature Google's argument that maintaining ad log files is overly burdensome – the actual burden of preserving the ad logs necessary for this case is yet to be determined. Google's proposal thus boils down to a demand that plaintiffs condone Google's decision not to preserve ad data that is central to this case. As already explained, plaintiffs cannot give their imprimatur to the destruction of highly relevant materials they have never seen.

To move the discussion forward, however, plaintiffs proposed that Google submit to the Court an order (rather than a joint stipulation) limiting Google's preservation duties regarding ad logs. Plaintiffs are not objecting, while reserving their rights. This way, plaintiffs are not put in the impossible position of having to "stipulate" to something that they have not yet seen or explored. In light of plaintiffs' agreement to discuss sampling ad log data with Google to address Google's burden concerns, Plaintiffs' proposed ESI Order, Ex. 1, reflects this reasonable compromise.

Plaintiffs have also proposed that the parties jointly request an additional 48-hours to try to resolve these issues. Google has rejected this, and hence plaintiffs respectfully filed the instant letter to update the Court as ordered, on the progress of the discussions.

Respectfully submitted,

/s/

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